

subject to mandatory negotiations only. Mandatory negotiation periods are defined as follows:

- (1) Non-public safety incumbents will have a two-year mandatory negotiation period; and
- (2) Public safety incumbents will have a three-year mandatory negotiation period.

[62 FR 12758, Mar. 18, 1997, as amended at 65 FR 48182, Aug. 7, 2000]

§ 101.71 Voluntary negotiations.

During the voluntary negotiation period, negotiations are strictly voluntary and are not defined by any parameters. However, if the parties have not reached an agreement within one year after the commencement of the voluntary period for non-public safety entities, or within three years after the commencement of the voluntary period for public safety entities, the FMS licensee must allow the ET licensee if it so chooses to gain access to the existing facilities to be relocated so that an independent third party can examine the FMS licensee's 2 GHz system and prepare an estimate of the cost and the time needed to relocate the FMS licensee to comparable facilities. The ET licensee must pay for any such estimate.

[62 FR 12758, Mar. 18, 1997]

§ 101.73 Mandatory negotiations.

(a) If a relocation agreement is not reached during the voluntary period, the ET licensee may initiate a mandatory negotiation period. This mandatory period is triggered at the option of the ET licensee, but ET licensees may not invoke their right to mandatory negotiation until the voluntary negotiation period has expired.

(b) Once mandatory negotiations have begun, an FMS licensee may not refuse to negotiate and all parties are required to negotiate in good faith. Good faith requires each party to provide information to the other that is reasonably necessary to facilitate the relocation process. In evaluating claims that a party has not negotiated in good faith, the FCC will consider, *inter alia*, the following factors:

(1) Whether the ET licensee has made a *bona fide* offer to relocate the FMS li-

censee to comparable facilities in accordance with Section 101.75(b);

(2) If the FMS licensee has demanded a premium, the type of premium requested (*e.g.*, whether the premium is directly related to relocation, such as system-wide relocations and analog-to-digital conversions, versus other types of premiums), and whether the value of the premium as compared to the cost of providing comparable facilities is disproportionate (*i.e.*, whether there is a lack of proportion or relation between the two);

(3) What steps the parties have taken to determine the actual cost of relocation to comparable facilities;

(4) Whether either party has withheld information requested by the other party that is necessary to estimate relocation costs or to facilitate the relocation process.

(c) Any party alleging a violation of our good faith requirement must attach an independent estimate of the relocation costs in question to any documentation filed with the Commission in support of its claim. An independent cost estimate must include a specification for the comparable facility and a statement of the costs associated with providing that facility to the incumbent licensee.

(d) Provisions for Relocation of Fixed Microwave Licensees in the 2165–2200 MHz band. Mandatory negotiations will commence when the Mobile-Satellite Service (MSS) licensee informs the fixed microwave licensee in writing of its desire to negotiate. Mandatory negotiations will be conducted with the goal of providing the fixed microwave licensee with comparable facilities, defined as facilities possessing the following characteristics:

(1) *Throughput*. Communications throughput is the amount of information transferred within a system in a given amount of time. If analog facilities are being replaced with analog, comparable facilities provide an equivalent number of 4 kHz voice channels. If digital facilities are being replaced with digital, comparable facilities provide equivalent data loading bits per second (bps).

(2) *Reliability*. System reliability is the degree to which information is